IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 606 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

n'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI BABU MOHAN

Versus

STATE OF GUJARAT

Appearance:

MR ADIL MEHTA for Appellants

MR KT DAVE APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 18/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal arises of the judgment and order

dated 20th May, 1993, passed by the learned Additional Sessions Judge, Bhavnagar, in Sessions Case No. 205/92. Under the impugned judgment and order, the learned Additional Sessions Judge, Bhavnagar, has recorded conviction of the accused-appellants nos. 1 and 2 under section 302 read with section 34 IPC, and has passed sentence of life imprisonment. The accused-appellants nos. 1, 3 and 4 have been convicted for offence punishable under section 324 read with section 34 IPC and have been sentenced with RI for one year and fine of Rs.500/- each. In the event of the default in payment of fine, further sentence of SI for three months has been passed. The accused no. 5 Rameshbhai Mohanbhai has been acquitted of all the charges. Feeling aggrieved, the accused nos. 1 to 4 have preferred this appeal. Pending the appeal, the sentence passed against appellants nos. 3 and 4 has been suspended and they have been released on bail.

The accused, the complainant, the eye witnesses and the deceased were the residents of village Nagdhaniba of Taluka-District-Bhavnagar. It was alleged that on 29th May, 1992, at around 5-00 O'clock in the afternoon, the accused, Babubhai Mohanbhai (accused no.1), Dulabhai Pragabhai (accused no.2), Premabhai Mohanbhai (accused no.3), Mohanbhai Pragabhai (accused no.4) and Rameshbhai Mohanbhai (accused no.5) were laying roof tiles on a room newly constructed by them adjacent to their existing two rooms. The residential premises of witness Popatbhai Tapubhai was adjacent to the premises of the accused. Popatbhai Mohanbhai complained to the accused that storm water from their roof was discharged through his courtyard, and that would damage his house and instructed them to see to it that the storm water from their roof was discharged on one side. Feeling agitated, the accused started abusing Popatbhai Tapubhai, and his father Tapubhai Sidibhai, the deceased Thereupon Popatbhai Tapubhai challenged them not to abuse Tapubhai or himself. Feeling enraged, the accused no. 1 Babu Mohan came down and assaulted the witness Popatbhai. Babu Mohan hit the witness Popat with the axe on the forehead. He fell down and the witness Jikuben (PW-8) saved him by covering him. Thereafter the accused went to their house. She immediately ran to call the deceased Tapubhai Sidi, the father of the witness Popatbhai. While the deceased Tapubhai Sidi was going to the house of Popat, the accused Ramesh Mohan summoned him saying that his son was lying there. As the deceased Tapubhai Sidi and his brother Kalubhai Sidi (PW-4) reached the house of Dula Praga, the accused Babu Mohan hit Tapubhai Sidi on head with the axe. On receiving the said blow,

Tapubhai fell down and the accused Dula Praga stabbed him with a knife on the left side of the chest. The witness Kalubhai Sidi apprehending that the accused would kill Tapubhai Sidi, fell upon Tapubhai Sidi to cover him. In his effort to save Tapubhai Sidi, the accused Mohanbhai Pragabhai hit Kalubhai Sidi on head with a wooden log (dhoko). On receiving the blow on head, the witness Kalubhai Sidi became unconscious. Hearing the shouts and ensuing commotion, the crowd gathered and all the accused went to their house. The injured Popatbhai, Tapubhai and Kalubhai were removed to the Civil Hospital at Bhavnagar. The deceased Tapubhai succumbed to his injuries and died on 5th June, 1992. The FIR was lodged by the injured witness Kalubhai on 29th May, 1992 after he regained consciousness. He gave an additional statement on 30th May, 1992. All the five accused persons were charged for the offence punishable under section 302 read with section 34 IPC. The accused nos. 1, 3 and 4 were charged for the offence punishable under section 326 read with section 34 IPC also.

The prosecution has examined Dr. Badhabhai Mangabhai Dabhi (PW-1). He has proved the medical certificate (EX-16). He has stated that on 29th May, 1992, at around 8-45 in the evening, injured Kalubhai was examined by him. He had certified that Kalubhai had contusion on the back over the right scapula. He opined that such injury could be caused by hard and blunt object like stick or pipe. He has also opined that the injury must have been received some 4 or 5 hours before it was examined. He had also received injury above the ankle. Dr. Ganibhai Kasambhai Saiyad (PW-2) , the Medical Officer has stated that on 29th May, 1992, he had examined Tapubhai. Tapubhai had received cavity deep stab wound on the left side of the chest, a bone deep contused lacerated wound on the left frontal region and a bone deep contused lacerated wound on the left parietal region. He had also suffered a fracture on the left fronto parietal region. He opined that the injury no. 1 could have been caused by sharp cutting weapon like axe, and injuries nos. 2 and 3 could be caused by hard and blunt weapon. He denied that the patient had consumed alcohol. The patent was referred to the Civil Hospital at Ahmedabad. He has proved the medical certificate (EX-18) and the X'ray photograph (EX-19). He had also examined Popatbhai Tapubhai on the same evening. Popatbhai Tapubhai had received an incised wound injury on the right side of forehead. He was admitted to the Hospital and was discharged on 4th June, 1992. He opined that the said injury could have been caused by a sharp cutting weapon. He proved the medical certificate

(EX-21). Dr. Hareshbhai Mulchandbhai (EX-14) has been examined to prove the Postmortem Note (EX-48). He has certified that - " the cause of death is due to shock as a result of head injuries sustained."

The eye witness Kalubhai Sidibhai (PW-4) the brother of the deceased Tapubhai Sidibhai has stated that on the day of the incidence, one Jikuben had informed him and the deceased Tapubhai that Popatbhai was beaten by the accused Babubhai Mohanbhai, Dulabhai Pragabhai and Rameshbhai Mohanbhai. Hearing this, the witness Kalubhai and deceased Tapubhai went to the house of Popatbhai Tapubhai. However, on the way, Babubhai Mohanbhai hit Tapubhai on the head with the axe and Tapubhai fell down. Thereafter Dulabhai Pragabhai stabbed him on the left side of the chest. Apprehending that the accused would kill Tapubhai, the witness Kalubhai fell on Tapubhai. At that time, accused Mohanbhai Pragabhai hit him with the wooden log (Dhoko) on the head. He immediately lost consciousness. After he was removed to the Hospital and after he regained consciousness, he gave the FIR before the police. The evidence of Kalubhai (PW-4) is supported by the eye witness Samantbhai Mansingbhai (PW-5), Savjibhai Kanjibhai (PW-6), Popatbhai Tapubhai (PW-7) and Jikuben Bhupatbhai (PW-8). All the eye witnesses and the FIR are consistent with respect to the accused Babubhai Mohanbhai having an axe in his hand and his having hit the deceased Kalubhai and the injured Popatbhai Tapubhai with the axe. The witnesses Kalubhai Sidibhai, Samantbhai Mansingbhai and Savjibhai Kanjibhai are consistent in their statements that the accused Dulabhai Pragabhai had a knife and he had stabbed deceased Kalubhai on the left side of the chest. The injuries given to the deceased Tapubhai Sidibhai and injured Popatbhai Tapubhai are proved by the medical evidence recorded hereinabove. It was natural for all the witnesses to be present at the place of the incidence. Their conduct and their evidence are also natural. There is no reason why the evidence of these eye witnesses should not be believed. Considering the evidence on record, we are of the view that the learned trial Judge has rightly convicted the accused no. 1 Babubhai Mohanbhai and accused no. 2 Dulabhai Pragabhai for offences punishable under section 302 read with section 34 IPC. The conviction of the accused-appellants Babubhai Mohanbhai and Dulabhai Pragabhai and the sentence passed upon them are confirmed.

We find that as regards the involvement of the accused Premabhai Mohanbhai and Mohanbhai Pragabhai, the evidence is not consistent. In the FIR the witness

Kalubhai Sidibhai had stated that the accused Mohanbhai Pragabhai had hit him on the head with the wooden log (Dhoko), however, no head injury has been found on the said witness Kalubhai Sidibhai. In his oral evidence, in the examination-in-chief, he has repeated that the accused Mohanbhai Pragabhai had hit him with the wooden log on the head, while in the cross-examination, he has admitted that in his additional statement recorded by the police on 30th May, 1992, he had stated that it was accused Premabhai Mohanbhai who had hit him on the head with the stick. Thus, as regards the injuries given to the witness Kalubhai Sidibhai, we find that the evidence is doubtful. The accused Premabhai Mohanbhai and Mohanbhai Pragabhai, in our view are, therefore, entitled to the benefit of doubt. We accordingly give the benefit of doubt to the accused Premabhai Mohanbhai and Mohanbhai Pragabhai and acquit them of the charges framed against them. The conviction of the said accused Premabhai Mohanbhai and Mohanbhai Pragabhai under section 324 read with section 34 IPC and sentence passed upon them are quashed and set aside.

The appeal is allowed to the aforesaid extent. The bail bonds given by the accused Premabhai Mohanbhai and Mohanbhai Pragabhai be cancelled. Muddamal articles be disposed of as directed by the trial court. The amount of fine paid by the accused nos. 3 and 4 viz. Premabhai Mohanbhai and Mohanbhai Pragabhai be refunded to them.

(MS R.M.DOSHIT J)

(A.L.DAVE J)

JOSHI